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MARSHALL & MELHORN, LLC FOUR SEAGATE - EIGHTH FLOOR TOLEDO, OH 43604				CHEN, BRET P
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SRIKANTH VARANASI
and MICHAEL P. REMINGTON, JR.

Appeal 2010-004322
Application 10/765,256
Technology Center 1700

Before CATHERINE Q. TIMM, JEFFREY T. SMITH, and
BEVERLY A. FRANKLIN, *Administrative Patent Judges*.

FRANKLIN, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-14, 16-20, and 27-29. We have jurisdiction under 35 U.S.C. § 6.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Claim 1 is representative of the subject matter on appeal and is set forth below:

1. A method for depositing an iron oxide coating on a glass article by atmospheric pressure chemical vapor deposition in an on-line float glass process, comprising:

providing a heated glass substrate having a surface on which the coating is to be deposited;

premixing ferrocene and an oxidant to form a uniform gaseous precursor mixture;

directing the precursor mixture toward and along the surface to be coated; and

reacting the precursor mixture at or near the surface of the glass substrate to form an iron oxide coating;

wherein the iron oxide coating formed thereby is primarily in the form of Fe₂O₃.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Halaby	3,892,888	Jul. 1, 1975
Higby	5,780,372	Jul. 14, 1998
McCurdy	6,238,738 B1	May 29, 2001
Robinson	US 2002/0135099 A1	Sep. 26, 2002

THE REJECTIONS

1. Claims 1-14, 16-20, and 29 are rejected under 35 U.S.C. § 103 as being unpatentable over Halaby in view of Robinson or vice versa, and further in view of McCurdy.
2. Claims 27 and 28 are rejected under 35 U.S.C. § 103 as being unpatentable over Halaby in view of Robinson or vice versa, and further in view of McCurdy, and further in view of Higby.

ISSUE

Did the Examiner err in determining that Robinson and McHurdy are combinable with Halaby in view of the fact that Halaby teaches to obtain iron compound vapors using an oxygen free method in a batch process?

We answer this question in the affirmative and REVERSE.

ANALYSIS (with Findings of Fact and Principles of Law)

As an initial matter, Appellants have not presented separate arguments for all of the rejected claims. Rather, Appellants' arguments are principally directed to independent claims 1 and 16, and we select claim 1 as representative for our review. Any claim not separately argued will stand or fall with its respective independent claim. *See 37 C.F.R. § 41.37(c)(1)(vii).* Also, we focus on Rejection 1 and our determination made with respect to Rejection 1 is dispositive for Rejection 2 also.

The Examiner admits that Halaby's process involves a batch process and not a float glass process as in Robinson and McHurdy. Ans. 3, 8.

Appellants argue that these two processes are incompatible such that the references are not combinable. Br. 13. Reply Br. 5-10.

The Examiner also recognizes that Halaby does not teach the step of “premixing ferrocene and an oxidant to form a uniform gaseous precursor mixture”.² The Examiner relies upon McCurdy for teaching premixing precursors to form a uniform gaseous precursor mixture for delivery to a substrate surface within a chamber. Ans. 4.

McCurdy is not directed to the same precursors as set forth in Halaby and as claimed by Appellants. McCurdy is directed to precursors which include tin or titanium tetrachloride and an organic oxygen containing compound, and a carrier gas. McCurdy, col. 4, ll. 60-64.

In view of the fact that Halaby specifically teaches obtaining the iron compound vapors using an oxygen free method (Halaby then delivers the vapors with or without a carrier gas), coupled with the fact that Halaby is a batch process rather than an on-line float glass process (as set forth in both Robinson and McCurdy), coupled with the fact that McCurdy is not directed to the same precursors as set forth in Halaby and as claimed, we agree with Appellants that the Examiner has not established a reasonable expectation of success to support his conclusion of obviousness. “[A] reasonable

² The Examiner finds that Halaby teaches that once the iron compound vapors are obtained using an oxygen free method, they can be transported to the heated substrate using a carrier gas such as oxygen. Halaby, col. 6, ll. 2-9. Halaby specifically indicates that the iron compound vapors are obtained using an oxygen free method. Halaby, col. 2, ll. 52-69. Hence, the Examiner is correct that Halaby does not teach “premixing ferrocene and an oxidant to form a uniform gaseous precursor mixture” because Halaby specifically requires an oxygen free method of obtaining the iron compound vapors as the precursor. *Id.*

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expectation of success, not absolute predictability” supports a conclusion of obviousness. *In re Longi*, 759 F.2d 887, 897 (Fed. Cir. 1985). However,

to have a reasonable expectation of success, one must be motivated to do more than merely [] vary all parameters or try each of [the] numerous possible choices until one possibly arrive[s] at a successful result, where the prior art gave either no indication of which parameters were critical or no direction as to which of many possible choices is likely to be successful.

Pfizer, Inc. v. Apotex, Inc., 480 F.3d 1348, 1365 (Fed. Cir. 2007) (quoting *Medichem, S.A. v. Rolabo, S.L.*, 437 F.3d 1157, 1165 (Fed. Cir. 2006) (internal quotations omitted)).

In the instant case, the applied art gives no direction to premix ferrocene and an oxidant to form a uniform gaseous precursor mixture in an on-line float glass process for the reasons discussed, *supra*. Halaby in fact requires an oxygen free method of obtaining the iron compound vapors as the precursor.

REVERSED

Each rejection is reversed.

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MARSHALL & MELHORN, LLC
FOUR SEAGATE – EIGHTH FLOOR
TOLEDO, OH 43604